79-1992

Supreme Court, U. S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1979

****

No. 79-1992

****

WAYNE C. LA VELLE, Petitioner

v

WORKERS' COMPENSATION APPEALS BOARD,
State of California Trans World Airlines
LIBERTY MUTUAL INSURANCE CO.
INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS LOCAL 1111
DISTRICT 142 OF THE INT'L
ASSOCIATION OF MACHINIST
HARTFORD ACCIDENT & INDEMNITY CO
Respondents

****

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

****

PETITIONER'S REPLY MEMORANDUM

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July 26, 1980

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Respondent, in its oppossing brief #79-1992, submits that the United States Supreme Court has no jurisdiction over the federal questions raised by the Petitioner because of non-compliance with rule 23 (1) (f).

Petitioner has complied with Rule 23 (1) (f) on page six (6) of his Petition for Writ of Certorari, but a typeographical omission did take place. After Section 13, Article 1, insert, "...of the Constitution of California and in violation...". The Petitioner seeks review because of the due process questions involved. After Petition for Writ of Certorari was docketed, the State of Californis Court of Appeal published the contents of the Denial of Writ of Review. This review, as copied, appears in the appendix hereto. The last sentence evidences the Petitioner's claim in compliing to Rule 23 (1) (f).

> LaVelle also contended that he was denied due process because the Judge refused to review all the reports of Drs. Novom and Hector and the reports related to his prvious left extremity injuries. Apparently no response was filed.

QUESTIONS PRESENTED

QUESTION I

The Petitioner's intention in presenting question I is to emphasize the disabled condition he was in both physically and mentally at the time of the trial. The Petitioner was in constant pain from his physical injuries to his right knee, left hand, left arm, back, lungs, and chest area. He took medication for these pains. In addition, the applicant suffered and took medication for his mental illness. Question one stands alone as presented.

QUESTION II

As presented in the Petitioner's Writ for Certorari, the Respondent's brief attempts to pull the Supreme Court Justices thoughts away from the incompetency issue and the petitioner's ability to receive a fair trial without an attorney.

Because of his indigent status, the Petitioner begged the Judge to help him by having the insurance companies continue disability payment. Petitioner made a special plea because it was Christmas. Still no money came in until the petitioner won a Social Security Admin-

istrative decision on January 9, 1978.

During this time when Petitioner was indigent, the Los Angeles Welfare Dept. refused the Petitioner any benefits. The Petitioner had no money, so he was forced to rent his house to keep from forclosure. The applicant was therefore rejected from receiving welfare assistance because he did in fact own a home. The house finally had to be sold (at a considerable loss) to pay off creditors, taxes, and family members who gave support to the applicant over the years of the trial. The Judge's summary of evidence has always failed to report the request for legal assistance and the request for money payments.

QUESTION III

To the Respondent's claim that that petitioner never claimed incompetency at any stage of the trial, and that the record is devoid of any medical reports asserting that the Petitioner was incompetent, or either unable to manage his own affairs, or unable to prosecute his own litigation is not true. On the contrary. the Petitioner did file with the Appeals Board medical files and the

Social Security Decision on January 9, 1978, stating that the applicant could not take care of his daily life and responsibilities.

The Petitioner still claims that he is incompetent. It is noted by the Respondents that his legal writs have demonstrated some clear intellectual functioning. However, it is a medical fact that intellectual abilities do not insure mental stability or cure mental illness. Also, mental illness does not mean that a person is completely disabled all the time in every circumstance. In this case, the Petitioner has used intellectual persistance to express and demonstrate his own obsessive-neurotic personality.

PERSONAL LIBERTY
AND PROPERTY

The petitioner rebuts the Respondents statement on page 3a that personal liberty and property is not taken away in Workers' Compensation proceedings. The Petitioner contends that when the applicant is denied medical treatment and disability compensation because of an unfair trial and no legal assis-

tance, personal liberty and property have indeed been taken away.

The Respondent states that economic status is not determinative to the fact of attorney representation. What the respondent attorney has stated in Labor Code Section 4903 (a) is true. What is not true is his summation that the rich and poor have available free attorney service until a fee is awarded.

Many attorneys because of Labor Code Section 4903 (a) refuse claimants because the case won't bring a large sum of money or because of the long time it takes for the attorney to collect his money, which makes taking the case useless.

A special intention in this case was the fact that the applicant was mentally ill. Many of the attorneys did not want to confront the obstacles concerning the Petitioner's case because of his mental illness. Also, in the present case, the applicant had twelve compensation cases to be heard before the Appeals Board. The law does <u>not</u> regulate to attorneys who or what cases they must represent. The law fails to protect the injured worker from being scrutinized by

the California Applicants' Association. As it stands now, the injured worked who fails to secure representation must either represent himself or sign a compromise and release form.

A criminal being brought up on charges can obtain an attorney, if unable to afford one through the Public Defenders Office. The injured worker is entitled to as much protection from injustice. (A public compensation Agency could be set up offering services and refusing no one. The agency would be self-supporting and would need no tax revenue.)

The Petitioner was requested to pay $200.00 to Ermet Mathews, attorney, from a disability check before the trial had been heard. The trial in the present case lasted over <u>eight years</u>. (The record will reflect the complexness of these cases.) It is easy to see why an attorney, after working on a case for many years,may want monies from the client.

To the issue of inexperience, the Respondent would have the court believe that the petitioner did the work in obtaining favorable awards from the Appeals

Board. This is not true. The attorneys involved throughout the proceedings did a largs amount of work before being dismissed. For instance, the medical files on the five knee cases were completed and introduced into the record. The Applicant had underwent three knee surgeries. Thefacts were apparent to all sides. This work was performed by Ermet Mathews.

Much of the psychological ground work was done by William Gordon. Mr. Gordon was;obtained after Mr. Mathews voiced that the petitioner was "crazy". Then, because of the mental illness a conflict developed between Mr. Gordon and the Petitioner. The applicant became neurotic and took the files from Mr. Gordon. The applicant was sick and could not conceive or experience patience. The third attorney was Joseph Miller. He did all of the work on the ling case. Yet, again, the mental condition affected the attorney-client relationship because he requested to be released from his involvment.

The Petitioner coulc not function

as a normal person to take care of daily need, and could function only in a sheltered envirnment. The Petitioner's mental illness forced him into a situation where he could not effectively role play.

Transparent revision of the Respondent's statements regarding assistance of counsel reflects the thought that no applicant needs an attorney. If the Workers' Compensation Act is drawn in such a way that it is not a technical and elaborate procedure, then why did the Respondent employer have two Professional Legal Corporations representing them, and why did the International Association of Machinists and Aerospace Workers Local 1111 along with District 142 have two Professional Legal Corporations representing them?

In fact, the Workers' Compensation Game has become to technical and elaborate that non-medical companies solicit cases of injured workers for carefully selected doctors, who then are expected to produce the kind of medical reports desired by insurance companies, private businessmen or in some cases, worker's attorneys. This information is taken

from petitioner's appendix hereto.(1) (L.A. Times article on Workers' Compensation.)

The above statement taken from the L.A. Times article spells out an elaborate procedure. There is presently a planned overhaul of the California Workers' Compensation system which would limit the role of lawyers. This has caused much debate from lawyers and doctors. Theinteresting point for the Petitioner is what one lawyer said about the proposals:

> "The proposal is an anti-lawyer measure that is going to leave injured workers totally at the mercy of the bureaucracy", warned San Jose attorney Robert Morgan last friday, just before the California Bar Assn's Board of Governors voted to oppose major portions of the bill.

This statement is from the L.A. Times, June 3, 1980, from Petitioner's appendix (2) hereto.

The petitioner in the present cases has been at the total mercy of the bureaucracy and failed to receive a fair trial.

The Respondent's attempts to ascertain what type of legal advice Joseph Miller would have given the applicant. Would it relate only to the one case, when all

twelve cases were tried at once. If something said in one case would effect the outcome of the precise case he represented, would this also create a co-counsel situation? The Respondent cannot way for instance that the mental illness did not affect their case and not Mr.Miller's case.

The Workers' Compensation Appeals Board Rules of Practice and Procedure reflect petitioner's claim that the cases are related;

Section 10590: Consolidated Cases. Consolidation of two or more related cases may be ordered for the purpose of receiving evidence. Whether a consolidation be ordered or a master file used to accommodate exhibits shall rest in the sould discretion of the Appeals Board members or referee presiding. Under such consolidation, all documentary evidence previously received in an individual case shall be reintroduced in the consolidated proceedings under a master file, if so designated. When so adduced, such evidence shall be deemed part of the record of each of the seceral consolidated cases. Evidence received subsequent to the order

of consolidation shall be similarly received with like force and effect.

Section 10592. Service of Pleadings and Decisions, Consolidated Cases. Separate pleadings shall be filed and separate findings, orders, decisions and awards shall be made and filed in each case consolidated for hearing. Joint minutes of hearing, summaries of evidence and opinions may be utilized with sufficient copies for the required filing and service in each of the several cases.

Additionaly, Respondent attorney for TWA and Hartford Accident & Indemnity Co., Barry Evans, wrote in their Petition for Reconsideration Case No. 76 ING 38740 on page six (6) line five (5):

> ...since the psychiatric or functional element pervades <u>all</u> of the applications pending before the Board...

thus demonstrating a common link between each case. The Respondents and Petitioner agree that the above statement is true. Therefore the Respondent's suggestion that the United States Supreme Court would not have jurisdiction over the consolidated cases is not justified based on the foregoing statement.

The Petitioner sought to have the cases re-consolidated as they were in the Appeals Board and rules 10590 and 10592, in addition to the U.S. Supreme Court Rules 23 (5) and 15 (3). The basic questions of due process are the same in all of the cases.

Petitioner still calims that the well-known adage that "he that is his own lawyer has a fool for a client" has a psychiatric basis. (Petition for Writ of Certiorari, page 15.)

For the Respondent to claim that the Petitioner has made no attempt to show that there was not a fair trial is not reasonable in relation to the Denial of Writ of Review contained in appendix hereto.

Just as the situation before this court reveals that the Petitioner did not receive a fair trial, the Workers' Compensation Judge was negligent in his responsiblity to use due diligence concerning any possible incompetancy of the applicant. It is conceivable that Judge Fluharty didn't read the medical reports until the case was submitted for decision. In fact, it took the trial Judge <u>six</u>

years after the original application to decide that indeed the Petitioner was suffering from mental illness.

The Petitioner is in no way attempting to inflame the record on his claim of incompetency. In fact, if the complete record is secured by this court no doubt will be left in anyone's minds. The medical reports and decisions by the Social Security Administration will rebut the Respondent's theory that the applicant wasn't a mental incompetent. The Petitioner has an organic mental illness known as Manic-Depression, for which he has been under medication and psychotherapy for seven years. This disease is pathologic, causing a chemical imbalance inthe brain. Manic-Depressive Syndrome is characterized by severe, debilitating mood swings and episodes of psychotic behavior, with these symptoms being caused or aggravated by stress. A full rang of evidence can be reached at the Justices command, and will effectively demonstrate the lack of due process between the Petitioner and the Respondents. The Petitioner has never claimed any degree of "psychoneurosis"--this is the

wordage of the Respondent's attorney.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the Judgement and Opinion of the Court of Appeal of the State of California, First Appellate District, Division one.

Respectfully submitted,

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Appendix I

MF Los Angeles Times Mon., May 12, 1980—Part I 3

Alleged Abuses in Workers' Compensation Cases Under Probe

Ghost-Written, Tailor-Made, Questionable

Medical Reports Cited

By HARRY BERNSTEIN
Times Labor Writer

State investigators have opened a major inquiry into allegations that some doctors are taking fees for signing their names to "ghost-written" medical reports in workers' compensation cases and that other doctors are writing or signing "tailor-made" medical reports upon request.

Another phase of the inquiry deals with non-medical companies that allegedly solicit cases of injured workers for carefully selected doctors who then are expected to produce the kind of medical reports desired by insurance companies, private businessmen or, in some cases, workers' attorneys.

The state officials are also investigating allegations of excessive or unnecessary medical and legal fees in some workers' compensation cases.

But the primary thrust of the investigation is into the questionable medical reports allegedly being used to eliminate or reduce benefits sought by workers in on-the-job accidents or used by workers themselves to get undeserved benefits.

There is general agreement among lawyers, doctors and workers' compensation experts that abuses do exist, and that doctors can be found to write a report to prove almost anything, including, as one lawyer jokingly said, "that it really isn't so bad to lose a leg."

But there is a strong argument over both the extent of such abuses and over the most effective method of correcting them.

Don Vial, state industrial relations director, said that, "our awareness of a growing number of abuses led to

the current investigation and is a key reason behind our attempts to bring about major legislative changes in the workers' compensation system."

With the support of the California Federation of Labor, major employers and many insurance companies, the Brown Administration has prepared legislation that would make the most sweeping changes in the state's $2.9 billion a year workers' compensation system since it was established 63 years ago.

Administration officials say the proposed changes would boost benefits paid to injured workers, but also would crack down on what they call "medical prostitutes"—doctors who write reports to meet the specifications of attorneys for either insurance companies, self-insured firms or injured workers.

But Vial, whose agency includes the workers compensation division, said the medical-legal adversary system now used to decide the amount of benefits to be paid "feeds these abuses, and we must come to grips with the problem before it destroys a program that is absolutely essential to workers."

Dr. William L. Clark, medical director of the state's Division of Industrial Accidents, said, "the abuses have become absolutely disgraceful."

Franklin O. Grady, administrative director of the industrial accident division, said that an increasing number of payments are dependent on the credibility of written medical reports.

in contrast to direct testimony given before a worker's compensation judge, where the doctor can be cross-examined by opposing attorneys.

"Serious doubt is cast on the reports when some non-medical entrepreneurs solicit business for doctors, then actually write or help write medical reports that are signed by the doctors and used for either the defense (the company trying to get out of paying a claim) or the worker," Grady said.

The Times has learned the names of four of the non-medical companies being investigated by the state for improperly assisting doctors in writing workers' compensation medical reports.

Robert G. Gonsalves, president or

chief officer of three of the companies —Inter-Val Management, M.L.I. Inc., and Medical Management Co.—insisted that his firms simply "review voluminous medical records that are six inches or a foot high sometimes and condense those records for a doctor into two or three pages."

Gonsalves said doctors often need assistance in understanding the non-medical aspects of workers' compensation, and do not have the time to review often lengthy medical histories, and these doctors are offered the service of his companies.

His business will not be limited to medical assistance, Gonsalves said, "because we also have contacts in China and hope to do some trading with that country."

Another firm being checked is Medical Associates Research Service, whose chief officer, Roger Skogman,

Please Turn to Page 19, Col. 1

is also a claims investigator for the city of Los Angeles.

Skogman said he sees no conflict of interest in the two jobs he holds, and insisted that when he does work through his company with physicians, "I point out to them the law as it exists so they can incorporate the points of law they need in writing their (medical) reports."

He denied that he writes any of the reports for doctors, or prepares such reports, and insisted that the major problem with worker's compensation is the abuse of it by workers who exaggerate their claims.

Efforts to see if report abuses exist statewide apparently began with a letter from Dr. Lawrence N. Borelli, an orthopedic surgeon in Westlake Village, who was concerned about an "approach" made to him by a non-medical firm that wanted to hire him, presumably to write slanted medical reports.

His letter, written October 10, 1979, found its way to the medical advisory committee for the industrial accident division.

It was the advisory committee, then, which decided a full investigation was needed to determine how many doctors and private non-medical firms write distorted medical reports.

Last December, the medical advisory committee, headed by Dr. Allen J. Enelow, unanimously adopted a resolution calling for a full investigation of "written-to-order" medical reports.

The confidential resolution said it was the opinion of the physicians on the advisory committee that "these practices may violate accepted canons of medical ethics, may constitute fraud and conspiracy to commit fraud, and, by misrepresenting the source of

evidence, may tend to interfere with just resolution of workers' compensation cases."

The actual investigation is being conducted by the state Board of Medical Quality Assurance, the agency that regulates medical practices in California.

Doctors leading the inquiry said there are at least three separate issues involved, but only one is clearly legal.

It would be illegal, they said, for a doctor to simply sign his or her name to a medical report written or prepared by someone else and used, for instance, by an insurance company trying to avoid payment of a disability claim to an injured worker.

It is wrong, said Dr. Clark of the state industrial accidents division, for a non-medical firm to "line up a panel

Officials say new laws are needed to minimize litigation in such cases.

of doctors it knows will write the kind of reports wanted by a company or an applicant for benefits, but whether such conduct is illegal is unclear."

But there are many doctors, he said, who are not "medical prostitutes, but because of their political views may naturally tend to be used by companies fighting claims or by workers seeking benefits.

"Some very conservative doctors simply feel most workers abuse the system and will write their medical reports minimizing the degree of a worker's injury because, consciously or subconsciously, the doctor doesn't want workers to have any benefits."

There are others, he said, who want a far more comprehensive medical care system than now exists in the United States, and so are willing to "slant" their medical report to help injured workers get more benefits than they are legally entitled to.

But all of those interviewed about the investigation agreed that although the number of doctors acting illegally may be relatively small, they constitute the most serious aspect of the problem because, as Clark put it, "these medical prostitutes will write and sell any kind of report the client wants."

State industrial relations director Vial is convinced that the bulk of the abuse comes from doctors who, for money or because of their political orientation, write reports to help insurance companies and self-insured businesses reduce their workers' benefit payments.

He said that in some ways the largest part of the problem does not involve dishonesty or false medical reports, but "excessive or unnecessary legal and medical fees, and by curbing such fees we can reduce substantially the cost of the program and increase benefits to workers."

In some cases, there is no hint of illegality, but state officials say the volume of business done by some doctors substantiates the contention that new laws are needed to minimize medical examinations and litigation in workers' compensation cases.

One Los Angeles physician, Dr. Martin Goldfarb, reportedly took in fees of close to $1 million in 1979, almost entirely from workers' compensation cases, and most of which were done for insurance companies, self-insured companies or governmental bodies such as a city or county.

Goldfarb's fees were checked many times by the Los Angeles Medical Assn.'s Peer Review Committee, which determined that some of his fees were excessive by 50% or more. As a result, Dr. Goldfarb agreed to reduce his fees.

Goldfarb refused to discuss the workers' compensation system, or his fees, and his attorneys warned The Times that any reference to the physician should be "accurate and honest."

The reference to his gross income and the medical association's review of his fees were confirmed by several sources, even though neither Goldfarb nor his attorneys, Ronald Ziff and Chuck Stovitz, would comment on them. There was no indication that Goldfarb is a target of a state investigation.

Enelow, chairman of the state Medical Advisory Committee, said he and his colleagues sought the investigation because it involves a "sometimes subtle problem that pervades the entire system, and it is very important that medical experts who evaluate workers' compensation cases are not seduced by the sources of their fees, even those doctors who are basically honest."

Appendix II

Los Angeles Times Tues., June 3, 1930—Part I-3

Plan to Overhaul Workers' Compensation Stirs Army Debate

Would Limit Role of Lawyers, Doctors in Claims Procedures

By HARRY BERNSTEIN
Times Staff Writer

Groups of angry doctors and lawyers have begun an intensive campaign to defeat or substantially modify proposals in the Legislature that would make the most sweeping changes ever in the state's workers' compensation system.

Hearings started a week ago in Sacramento on proposals to increase maximum temporary benefits to injured workers by 81% (up to a $280 weekly maximum), increase maximum death benefits to survivors by 264% (up to $200,000) and drastically change procedures for getting benefits.

The most controversial part of the proposal deals with the procedural changes, with each side insisting that it alone is truly interested in the welfare of the injured workers and in the efficiency of the $2.9 billion-a-year workers' compensation system.

Supporting the changes are the Brown Administration, the California AFL-CIO, the Association of California Insurance Companies and a number of major corporations.

The opponents, mainly doctors and lawyers, charge that the proposals would have a disastrous impact on injured workers by making it difficult if not impossible for them to get legal and medical help in obtaining benefits.

"The proposal is an anti-lawyer measure that is going to leave injured workers totally at the mercy of the bureaucracy," warned San Jose attorney Robert Morgan last Friday, just before the California Bar Assn.'s board of governors voted to oppose major portions of the bill.

The California Trial Lawyers Assn. has hired a public relations firm, Roger Beck, Inc., to fight the legislation in its present form.

And doctors who specialize in workers

compensation cases have formed the California Society of Industrial Medicine and Surgery to fight the proposed changes.

Sponsors of the changes counter that they would indeed limit the number of doctors and lawyers involved in getting workers their benefits and say they hope to curb if not eliminate abuses by lawyers who cause excessive litigation and doctors who make large sums of money by writing "tailor-made" medical reports to fit the specifications of those who buy their services.

Until now, the arguments over the proposed changes have taken place mostly in private or in legislative committees, but the opponents of the legislation have decided to go public with their objections.

The result is an intensified debate that proponents say may delay but will not stop the changes they seek in handling workers' compensation cases. Opponents' major modifications in the proposals must be made if any bill is to be passed by the Legislature.

There is general agreement that benefit levels for injured workers must be raised because of inflation and the only real argument on that issue is whether some of the increases should go to workers who get benefits for a permanent, partial disability. So far no increase is planned for a worker in this category, which has a limit of $70 a week.

Far more emotional arguments are raised over procedural changes, especially the one that would allow the state's Disability Evaluation Bureau to make an initial estimate of the extent of a worker's permanent injury based on the report of the doctor who is primarily responsible for the treatment of the workers.

At present, an injured worker can immedi-

ately hire a lawyer and get a doctor to determine the extent of his injuries. The worker's boss, or an insurance company, does the same thing, and the amount of benefits is sometimes decided only after a legal battle between the opposing sides.

Often the two sides agree on the amount, but when they disagree, the issue goes to trial before a workers' compensation judge who bases his decision on often conflicting medical reports.

Under proposed law, the state would make its benefit award based on the report of the physician who treats the worker, and only after that could the worker challenge the amount of the award.

Basic medical treatment costs would continue to be covered under the proposed legislation, but additional fees of lawyers and doctors would come out of a worker's benefits only if they took part in an appeal of the state's initial award and that award was increased.

The attorney's fee would be based on the amount of the increase, not on a percentage of the total award to the worker, as is the case now.

The fee of the doctor involved in the appeal would be paid in full, but only if the benefit was raised by the appeal.

The result, proponents of the legislation say, would be to sharply curb the intrusion of lawyers and doctors in workers' compensation cases and save millions of dollars in fees for what are called "unnecessary" legal consultations and medical examinations.

Opponents of the legislation insist doctors will not even examine an injured worker if they are going to be paid only if the state increases the initial compensation award and that lawyers will be reluctant to take cases for the same reason.

Carlyle R. Brakensiek, legal counsel for the Assembly Committee on Finance, Insurance and Commerce, which is hearing the debate, said, "The proposed system would put on one side the employer, the insurance companies and their teams of lawyers and sophisticated claims adjusters. On the other side you would have a lone worker who would be denied effective access to legal and medical advice until after the critical initial stages of his benefit claims are completed."

But Don Vial, the state's industrial relations director who is one of the key architects of the proposed legislation, called the opponents' fears "nonsense" and added:

"Their real fear is that there will be more money going to injured workers and less to the doctors who are hired to write the medical reports or the lawyers who make money out of the litigation."

The goal, Vial said, is "to put our confidence in the doctor who treats the injured workers and in a system that protects workers through administrative procedures, and not primarily through litigation."

Vial also noted that a worker would be entitled to get a doctor of his choice and would not be required to use only

a "company doctor" who might be biased in favor of the company's budget problems.

But another attorney, Barry Satzman, said that while it is true workers are entitled to a free choice of doctors, under the proposals "that choice is made only 30 days after the injury, or if the worker has notified the employer before the injury of the name of his or her doctor."

Satzman said few workers make such advance notices, and when they do, they usually select their family physician, who is not likely to be skilled in industrial accident work.

The result, he said, is that injured workers usually go to company-selected doctors who are "oriented" to the needs of the company instead of the worker.

Brakensiek said he has heard of the alleged widespread abuses by "prostitute doctors" who will write any kind of medical report a company will pay for, and of attorneys who drag out workers' compensation cases only to increase their fees.

But he contended that "the perceived abuses are worse than the reality, and are mostly exaggerations."

Vial responded, "Those who argue against the reforms and want to keep the present, excessive legal and medical costs actually belittle the intelligence of workers.

"They are saying workers are not able to participate in a system that will be set up to protect their rights unless they are led around by the nose by lawyers and the doctors who will write reports to order."

Arne Werchick, president of the 5,000-member California Trial Lawyers Assn., said that there are "many bad aspects of the bill, but the most serious of them is its intent to remove lawyers from the system."

It is easy to see why the insurance industry, a co-sponsor of the proposals, would want that, he said, because "it is much easier to keep from paying injured claimants all they are entitled to if the worker cannot have a lawyer representing him and protecting his rights."

But he expressed surprise that other sponsors, including the State AFL-CIO and the Brown Administration, would join in seeking the changes.

John Henning, executive secretary of the state AFL-CIO, said he thought there were substantial abuses in the present system and that changes are needed. But he said he is optimistic the abuses can be corrected without depriving workers of full legal protections.

Marvin Shapiro, head of the California Applicants Attorneys Assn., argued that the bill "does nothing whatsoever for those earning less than $12,000 a year." (Under the proposed legislation, workers who make less than $12,000 a year would get no increase in their maximum benefits because they already get two-thirds of their wages when injured, which is what the legislation seeks for all workers.) Shapiro also charged that only insurance companies would benefit from the proposed changes.

While most lawyers seem to have joined in opposition to the proposals, doctors are sharply divided, and many physicians are calling for the changes as a means of eliminating what they charge are the "bad apples" in their profession.

With the Legislature itself divided both on the usual political lines, and split by the intra-party battle between Assembly Speaker Leo McCarthy and former majority leader Howard Berman, the final outcome of the "reform" attempt is uncertain.

But all sides seem to agree that there will be major changes in the workers' compensation system this year.

Appendix III

WORKERS COMPENSATION BILL

The California legislature is entertaining Senate Bill No. 375 which would prevent workers from retaining a lawyer to handle a workers compensation case. In addition, it would stop medical payments while disputing a disability rating.

This Bill allows the insurance carrier to virtually control the workers compensation process. The effects of this Bill, if passed, would be a giant step backwards for the workers.

We urge you to write your State Legislators and urge that they DO NOT support the passage of Senate Bill No. 375. ★

Appendix IV

DENIAL OF WRITS OF REVIEW

WAYNE C. LA VELLE, Petitioner v.
WORKERS' COMPENSATION APPEALS BOARD OF THE STATE OF CALIFORNIA; TRANS WORLD AIRLINES; LIBERTY MUTUAL INSURANCE COMPANY, Respondents

W.C.A.B. No. 74 LA 391 394--
W.C.A.B. Judge Jesse Fluharty

Civil No. 47704--Court of Appeal
Second Appellate District, Division 1

For Petitioner--Wayne C. LaVelle
in propria persona

DISABILITY--PERMANENT--AN AIRLINE BAGGAGE HANDLER WHO SUSTAINED A SOFT TISSUE INDUSTRIAL INJURY TO THE FOURTH AND FIFTH FINGERS OF HIS LEFT HAND WAS NOT ENTITLED TO PERMANENT DISABILITY BENEFITS WHERE ALL OF THE REPORTING PHYSICIANS FOUND THE INDUSTRIAL INJURY PRODUCED NO PERMANENT DISABILITY. (See generally Hanna, California Law of Employee Injuries and Workmens' Compensation, Vol 2, §14.01(2) (a).)

DIGEST OF CASE DENIED JUDICIAL REVIEW

On May 4, 1974, Wayne C. LaVelle sustained an injury to the little and ring fingers of his left minor hand

while employed as a ramp serviceman by Trans World Airlines. At a hearing on LaVelle's application for workers' compensation benefits he testified that his fingers were injured when a baggage cart door closed on them. Apparently, the evidence also showed that LaVelle had sustained an injury to his left elbow in January 1967 as well as injuries to his left hand in March and June 1967.

The "Doctors First Report of Work Injury" regarding the May 1974 injury stated that LaVelle's fourth and fifth fingers were swollen and painful. The report also indicated that LaVelle would be disabled from work for three to four weeks. X-rays showed no broken bones. Dr. J. W. Fitzgerald reported on May 9, 1974 that LaVelle had a contusion of the left hand and referred him to Dr. S.J. Thorrens for treatment. On May 8, 1974, Dr. Thorrens reported that LaVelle's fingers swollen and painful and that permanent disability could not yet be determined. Dr. C. Ashworth reported on June 19, 1974, that his examination of LaVelle produced some unusual findings in that compression of the fourth

and fifth metacarpal heads produced complaints of left shoulder pain and that palpation of the region of the radial nerve near the left elbow brought complaints of pain in the left hand in the area of the ulnar nerve. On July 8, 1974, Dr. Ashworth reported that LaVelle had no objective findings on re-examination. The doctor also stated that he had been unable to find a cause for LaVelle's continued complaints of left hand pain.

LaVelle then went to Dr. Steven Novom, a neurologist, because his left hand pain continued. On August 12, 1977, Dr. Novom reported that test showed a possible blockage of the ulnar nerve at or above the left elbow which is a "common site for mild trauma to the ulnar nerve". Dr. Bruce Hector reported on November 30, 1977, that LaVelle complained of pain and cremping in the left hand with occasional radiation to the left shoulder. The doctor also stated that LaVelle's symptoms were consistent with the nerve tests results which indicated there was a partial ulner nerve blockage.

On May 25, 1979, the Workers' Compen-

sation Judge issued a Findings and Award finding that LaVelle's left hand injury did not result in any permanent disability. In his Opinion of Decision the judge stated that none of the reporting doctors indicated that LaVelle had any permanent disability as a result of the May 1974 injury. La Velle filed a petition for reconsideration which was denied by the Appeals Board on July 17, 1979.

In seeking a writ of review LaVelle contended that the medical evidence showed he had sustained a cumulative industrial trauma to the nerves of the left extremity which resulted in permanent disability. LaVelle also contended that he was denied due process because the judge refused to review all the reports of Drs. Novom and Hector and the reports related to his previous left extremity injuries. Apparently no response was filed.

WRIT DENIED February 22, 1980.